



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2003

Ms. Mia Settle-Vinson
Assistant City Attorney
City of Houston - Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR2003-9241

Dear Ms. Settle-Vinson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192085.

The City of Houston (the "city") received a request for "[i]nformation in an account or a voucher or contract regarding or relating to the 20 largest debtors to the Houston Public Library, their names, the amount they owe, and how many items remain outstanding." The requestor specifically excluded from his request "any information that would identify the specific materials or services used by library patrons." You state that the city "does not have any 'accounts, vouchers, or contracts' responsive to this request." However, you also state that the "[c]ity recognizes its responsibility to make a good faith effort to relate the request to information [it] holds."¹ Accordingly, the city submitted a record to us that it states "most closely relates to the information requested." You claim that portions of this record are excepted from disclosure pursuant to section 552.124 of the Government Code. We have considered the exception you claim and have reviewed the submitted record. We have also

¹ We note that it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. See Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. See Attorney General Opinion H-90 (1973); see also Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975); *Economic Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. -San Antonio 1978, writ dismissed). A governmental body must only make a good faith effort to relate a request to information which it holds. See Open Records Decision No. 561 at 8 (1990).

considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that person may submit comments stating why information should or should not be released).

Pursuant to section 552.303 of the Government Code, we requested that the city "explain the methodology utilized by the library to determine how patrons become debtors to the library, to specifically include information pertaining to how, and in what form, the library keeps a record of the amounts owed to the library by individual library patrons." We also requested pursuant to section 552.303 that the city "furnish us with evidence of, or any documentation relating to, this methodology to the extent that it exists and to the extent that it may be responsive to this request." In response to this specific request, you submitted a memorandum to us which describes a database from which the "responsive records" that you originally submitted to us were derived. You also stated in this response that the "responsive records were derived from the database . . . and the [c]ity does not believe that the information that serves to identify library patrons falls within the purview of § 552.022 of the Texas Government Code." In response and pursuant to section 552.303, we further requested that the city "submit a representative sample printout copy from the patron database" and requested that the city "ensure that this copy reflects the system of record keeping for accrual and payment of fines described" in the submitted memorandum. Finally, we requested that the city "ensure that the copy reflects the accrual and payment of fines for at least one of the twenty largest debtors to the library." In response to this second specific request, you submitted two exhibits which you state are not responsive to the request for information and which serve as representative samples of "patron record[s] from the [Houston Public Library] database" for the top twenty debtors.

After carefully reviewing all of your arguments, supporting documentation, and all of the submitted information, we find, based on the circumstances surrounding the derivation of the records that you submitted in response to the second specific request from our office, that some of these records, which we have marked, are responsive to the request for information.² The remaining submitted records are not responsive to the request for information and, thus, need not be released to the requestor in response to this ruling. However, because the records that we have marked are responsive to the request for information, we must address the procedural requirements of section 552.301 of the Government Code.

Section 552.301(e) of the Government Code provides that a governmental body that requests an attorney general decision under section 552.301(a) must, within a reasonable time, but not later than the fifteenth business day after the date of receiving the written request, submit to the attorney general, among other items, a copy of the specific information requested, or

² We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

representative samples of such information, labeled to indicate which exceptions to disclosure apply to which parts of the copy. *See* Gov't Code § 552.301(e). You state that the city received the request for information on September 16, 2003. Therefore, the city had until October 7, 2003 to provide us with a copy of the specific information requested, or representative samples of such information. However, as indicated above, the city did not provide us a representative copy of the specific information requested until December 9, 2003.³ Therefore, we find that the city failed to comply with section 552.301 of the Government Code in requesting this decision from us with regard to the requested information.

Because the city failed to comply with the procedural requirements of section 552.301 in requesting this decision from us, the information at issue is now presumed public. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The city must demonstrate a compelling interest in order to overcome the presumption that the information at issue is now public. *See id.* Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or when third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because we find that section 552.124 is designed to protect the interests of third parties, as discussed more fully below, we conclude that this exception to disclosure constitutes a compelling interest that is sufficient to overcome the presumption that the information at issue is public. Thus, we will address the city's claim under section 552.124 of the Government Code.

However, we must first address section 552.022 of the Government Code. Section 552.022 provides that:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

³ In this regard, we agree that the information originally provided by the city to this office on October 6, 2003 pursuant to section 552.301 of the Government Code was not responsive to the request for information submitted to the city by the requestor.

Gov't Code § 552.022(a)(3). We find that some of the records that were submitted in response to the second specific request made by us to the city are responsive to the requestor's request for information in that they constitute "information in an account . . . relating to the receipt . . . of public or other funds by [the library]." *Id.* We, thus, conclude that these records are subject to section 552.022(a)(3) of the Government Code. Therefore, the city must release these records to the requestor, unless they are expressly confidential under other law. Consequently, we must next address whether section 552.124 of the Government Code constitutes "other law" for purposes of section 552.022.

Section 552.124 of the Government Code makes confidential, with certain exceptions which are not applicable here, "[a] record of a library or library system, supported in whole or in part by public funds, that identifies or serves to identify a person who requested, obtained, or used a library material or service." Gov't Code § 552.124. We note that the legislative history associated with the enactment of section 552.124 suggests that the purpose of this exception is to protect the privacy rights of library patrons. *See* Senate Comm. on State Affairs, Bill Analysis, S.B. 360, 73d Leg., R.S. (1993). This conclusion is supported by the fact that the Legislature provided in section 552.124 that a record encompassed by this section is excepted from disclosure, unless, among other reasons, the record is disclosed "under Section 552.023." *See* Gov't Code § 552.124(a)(2). Section 552.023(a) of the Government Code provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a). Thus, it is apparent to our office that section 552.124 of the Government Code constitutes a law that was intended to protect a person's privacy interests.

Further, we note that subsection 552.124(b) provides that "[a] record of a library or library system that is excepted from required disclosure under this section is *confidential*." Gov't Code § 552.124(b) (emphasis added). Although the requestor contends that this confidentiality provision is discretionary in nature because section 552.124(a) allows for the disclosure of records that are excepted under that subsection in certain circumstances, we do not agree that this limited release provision makes the exception discretionary in nature. Thus, we find that section 552.124 of the Government Code is intended to protect the interests of third parties in requested information and specifically makes information that is excepted from disclosure by its provisions expressly confidential by law. Consequently, we conclude that section 552.124 of the Government Code constitutes "other law" for purposes of section 552.022.

Thus, we must next address the extent to which any portion of the information at issue is excepted from disclosure pursuant to section 552.124 of the Government Code. Although the requestor argues that section 552.124 excepts from disclosure the identity of a library patron only when it appears in the context of any specific material or service requested, obtained, or used by the patron, we disagree. We find that the plain language of

section 552.124 of the Government Code is clear and unambiguous in excepting from disclosure a record that identifies a library patron who requested, obtained, or used a library material or service, regardless of the context in which the identity of the patron appears in a requested record. A statute that is plain and unambiguous on its face will generally be construed as written. *See Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865-66 (Tex. 1999) (where statute is clear, courts will not look to extrinsic aids such as legislative history to determine Legislature's intent); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 324 (Tex. App.-Austin 2002, no pet.) (citing *Sorokolit v. Rhodes*, 889 S.W.2d 239, 241 (Tex.1994)) (stating that "[i]n applying the plain and common meaning of a statute, [one] may not by implication enlarge the meaning of any word in the statute beyond its ordinary meaning, especially when [one] can discern the legislative intent from a reasonable interpretation of the statute as it is written."); *Fleming Foods of Texas, Inc. v. Rylander*, 6 S.W.3d 278, 286-87 (Tex. 1999) (finding that plain language of codification must be effectuated, despite Legislature's stated intent that no substantive change in law was intended by codification); *RepublicBank Dallas, N.A. v. Interkal, Inc.*, 691 S.W.2d 605, 607-08 (Tex. 1985) (directing that statute be construed according to its plain language); *Smith v. Nelson*, 53 S.W.3d 792, 796 (Tex. App.-Austin 2001, pet. denied) (court must interpret legislative intent as expressed in plain language of statute); Gov't Code § 311.011 ("Words and phrases shall be read in context and construed according to the rules of grammar and common usage."); Open Records Decision No. 649 at 3 (1996) (confidentiality provisions strictly construed).

However, we also note that section 552.124 of the Government Code requires that a governmental body withhold only the names, addresses, and other information specifically identifying library patrons in such a record. Therefore, based on our review of the submitted records at issue, we have marked the portions of these records which identify or serve to identify a person who requested, obtained, or used a library material or service under section 552.124. Accordingly, we conclude that the city must withhold the marked portions of these records pursuant to section 552.124 of the Government Code. However, the city must release to the requestor the information in these records pertaining to the amounts owed to the library and how many items remain outstanding with regard to the twenty largest debtors.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

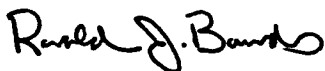
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 192085

Enc. Marked documents

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(w/o enclosures)